

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
	:	
-against-	:	19-CR-862 (VEC)
	:	
MICHAEL GONZALEZ,	:	<u>ORDER</u>
	:	
Defendant.	:	
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VALERIE CAPRONI, United States District Judge:

WHEREAS on June 24, 2021, the Court received three *pro se* letters from Mr. Gonzalez, Dkts. 437, 438, 439;

WHEREAS Mr. Gonzalez requested that the Court relieve Mr. Spilke and assign him a new attorney, among additional requests, *id.*;

WHEREAS on July 5, 2021, Mr. Spilke filed a letter informing the Court that Mr. Gonzalez was withdrawing his request to change counsel, Dkt. 461;

WHEREAS on July 7, 2021, the parties appeared for a change-of-counsel hearing;

WHEREAS at the hearing, Mr. Gonzalez confirmed that he would like to keep Mr. Spilke as his attorney;

WHEREAS Mr. Gonzalez reiterated his request to adjourn his sentencing to give Congress more time to pass the EQUAL Act, a bill currently in committee that aims to eliminate the disparity between crack and powder cocaine, a change that would reduce Mr. Gonzalez's sentencing guidelines; and

WHEREAS Mr. Gonzalez's pre-sentencing report ("PSR") states that Mr. Gonzalez "was a longtime member of the Latin Kings, but not a member of Black Mob," PSR ¶ 40;

IT IS HEREBY ORDERED that Mr. Gonzalez's request to change counsel is denied. The Court is persuaded that Mr. Spilke has acted in Mr. Gonzalez's best interest throughout this case, that Mr. Spilke fully explained all options to Mr. Gonzalez before Mr. Gonzalez decided to plead guilty, and, given that Mr. Gonzalez has retracted his request to change counsel, the Court sees no reason to appoint new counsel for Mr. Gonzalez.

IT IS FURTHER ORDERED that by no later than **Monday, July 12, 2021**, the Government must inform the Court whether it is the Government's contention that Mr. Gonzalez remains a member of the Latin Kings.

IT IS FURTHER ORDERED that the Government and Defense counsel's sentencing submissions are due no later than **Wednesday, July 21, 2021**. If the Government contends that Mr. Gonzalez is a member of the Latin Kings, then Defense counsel must include in its submission whether Mr. Gonzalez would like a *Fatico* hearing on the subject. Additionally, Defense counsel must include what other facts in the PSR — not including Probation's recommendation — that Mr. Gonzalez is contesting, whether he would like a *Fatico* hearing on those facts, if the Court should view those facts to be material to Mr. Gonzalez's sentence, and whether the Government disputes Defendant's position regarding those facts.

IT IS FURTHER ORDERED that Mr. Gonzalez's motion to delay sentence pending passage of the EQUAL Act is denied because it is far from clear that statute will be passed any time soon, if at all. Nevertheless, sentence for Mr. Gonzalez, currently scheduled for Tuesday, July 20, 2021 at 2:00 P.M., is adjourned to **Thursday, July 29, 2021 at 2:30 P.M.** If Mr. Gonzalez requests a *Fatico* hearing, the hearing will be held on that date. If the Court holds a *Fatico* hearing, the Court will decide at the conclusion of the hearing whether to continue with sentencing or to adjourn sentencing to another date.

IT IS FURTHER ORDERED that the sentencing will be held in Courtroom 443 of the Thurgood Marshall United States Courthouse, located at 40 Foley Square, New York, New York 10007.

IT IS FURTHER ORDERED that per the SDNY COVID-19 COURTHOUSE ENTRY PROGRAM, any person who appears at any SDNY courthouse must complete a questionnaire and have his or her temperature taken. Please see the enclosed instructions. Only those individuals who meet the entry requirements established by the questionnaire will be permitted entry. Please contact chambers promptly if you or your client do not meet the requirements.

IT IS FURTHER ORDERED that any person who appears at any SDNY courthouse must comply with Standing Order M10-468 (21-MC-164), which further pertains to courthouse entry.

IT IS FURTHER ORDERED that interested members of the public may attend by dialing 1-888-363-4749, using the access code 3121171 and the security code 0862. All of those accessing the hearing are reminded that recording or rebroadcasting of the proceeding is prohibited by law.

SO ORDERED.

Date: July 8, 2021
New York, NY



VALERIE CAPRONI
United States District Judge

Instructions for Courthouse Entry

All members of the public, including attorneys, appearing at a Southern District of New York courthouse must complete a questionnaire and have their temperature taken before being allowed entry into that courthouse.

On the day you are due to arrive at the courthouse, click on the following weblink to begin the enrollment process. Follow the instructions and fill out the questionnaire. If your answers meet the requirements for entry, you will be sent a QR code to be used at the SDNY entry device at the courthouse entrance.

Weblink: <https://app.certify.me/SDNYPublic>

Note: If you do not have a mobile phone or mobile phone number, you must complete the questionnaire and temperature screening at an entry device at the courthouse.